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VIA HAND DELIVERY

Ms. Victoria Rutson
Chief
Section of Environmental Analysis
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

**Re: Reply to Your Request for Information on Possible Bypasses Around Wolf
Mountains Battlefield Site**

Dear Ms Rutson:

This letter will respond on behalf of TRRC, Inc. to your request concerning the feasibility of using a different rail routing to avoid the area encompassed by the Wolf Mountains Battlefield. The following provides further details as to why it is not feasible to bypass the site boundary. We will also explain that the impacts on this area will be minimal.

At the outset, we note that the TRR II Draft EIS found that the TRR's preferred alignment would affect all or parts of three known historic properties, including the Wolf Mountains Battlefield. See TRRC II DEIS at 5-5. Further, the Tongue River II DEIS designated the battlefield site as probably eligible for listing in the National Register since it is a documented, definable event. TRRC II DEIS at 4-119. The TRR II DEIS indicated that impacts to any sites determined eligible for the National Register could be mitigated through appropriate data recovery procedures conducted pursuant to an approved Programmatic Agreement. TRRC II DEIS at 5-6.

The TRR III Draft Supplemental EIS found that both the approved alignment and the 1998 proposed refinements to that alignment would cross a portion of the Wolf Mountains Battlefield. The DEIS also notes that the site is now listed on the National Register of Historic Places. The Wolf Mountains Battlefield site was entered in the National Register on January 10, 2001. Further, the Draft

Supplemental EIS noted that, as stipulated in the revised Programmatic Agreement, a treatment plan would be developed that would outline procedures to avoid or mitigate the impacts of the railroad to this site.

According to the NRHP Registration Form submitted for the Wolf Mountains Battlefield site, that site is located approximately four miles southwest of Birney, Montana in a narrow corridor of the Tongue River valley. The Battlefield NRHP boundary spans the width of the Tongue River valley for approximately two-and-a-half miles, and extends along the axis of the river about two miles. The battlefield is naturally divided into three sections by two streams passing through the site: the Tongue River, which passes through the center of the site, separating the eastern and western portions of the battlefield, and Battle Butte Creek, which is a dry ephemeral stream.

Straddling the Battle Butte Creek at its intersection with the river are two areas significant to the battle. East and slightly north of the junction is the field where troops established their camp. West of the campsite, a plateau rises from Battle Butte Creek's intersection with the Tongue River. This elevation (known locally as Battle Butte) follows the smaller stream across the valley floor to the mouth of a small canyon approximately one-half mile from the river. As pointed out in Section 7 of the NRHP Registration Form for Wolf Mountain, the "Battle Butte" shown on the U.S.G.S. map, which is used as the basis for the map attached to this letter as Figure 1, is actually mislabeled. The correct location for Battle Butte, which is distinguished by the conical knoll in its center, is shown on the attached map.

Infeasibility of Rerouting TRRC Alignment to Avoid Wolf Mountains Battlefield

Based on an analysis undertaken by Mission Engineering, TRRC's consultant in this matter, bypass routings either to the north/west or east/south of the NRHP boundary are infeasible from an engineering perspective and inconsistent with the objective the TRRC line -- to efficiently transport coal using unit coal trains. Engineering design criteria used in connection with the TRRC rail line design effort include, as relevant, the following:

- maximum horizontal curvature of 3 degrees
- minimum tangent distance between horizontal curves of 200 feet
- maximum grade against empties of 1 percent compensated for curvature
- maximum grade against loads of 0.50 percent
- maximum vertical curvature of 0.05 feet per 100 feet in sags and 0.10 feet per 100 feet at summits

In addition, the TRRC engineering design process takes into consideration environmental screening criteria including the following: avoid to the extent possible Tongue River flood-plain; avoid to the extent possible prime farmland/cropland; avoid to the extent possible wetland areas; and, to the extent possible limit the amount of right-of-way required and avoid disturbance to the landscape.

While some have suggested that reasonable and feasible alternatives exist that bypass the Wolf Mountains Battlefield site to the north and west or to the east and south of the boundary, the fact is that there are no such alternative routes that would be either reasonable or feasible.

The attached Figure 1 illustrates the following:

- Wolf Mountains Battlefield National Register of Historic Places boundary;
- Topographic relief surrounding the battlefield site;
- The Tongue River and its meanders;
- Existing County Road # F.A.S. 566;
- 1996 STB approved alignment;
- 1998 proposed refinements to the TRR alignment;
- The possible routings of bypasses around the NRHP boundary to the north/west or to the south/east around the NRHP boundary. It is these bypasses, deemed by TRRC to be infeasible, which are considered here.

Figure 1 clearly depicts the substantial topographic and elevation changes that would be required for either a north/west or east/south bypass as compared to the 1996 initial alignment or the refinements to that alignment described by TRRC in 1998. The topography graphically illustrates why the cut and fill volumes for either bypass route are significantly greater than either the initial or the refined routes.

The major problem associated with either bypass route is that the existing terrain and natural grades are far in excess of TRRC's engineering and other criteria. The adverse terrain and grade issues could possibly be addressed only by implementing enormous cuts and fills which are otherwise unnecessary. As noted previously, however, the criteria implemented in the design of the TRRC line seek to avoid unnecessary and avoidable disturbance to the landscape and the host of environmental issues that would be associated with such cuts and fills. In both the north/ west and east/south bypasses discussed here, the amounts of excavation and embankment would be increased by tens of millions of cubic yards in order to meet the TRRC design criteria of rail grades not to exceed 1% compensated for curvature and the maximum "degree of curvature" not to exceed 3 degrees. These are the design criteria recommended by major rail carriers, including the BNSF, for "main line" unit train operations and they have been consistently applied by TRRC in its consideration of alternative routes.

If the TRR alignment were "rerouted" to the north/west of the NRHP boundary the following specific impacts would result:

1. The overall rail alignment would be increased in length by 4,700 ft.
2. The crossing of the Tongue River would require a 4,600 foot long fill across the Tongue River alluvial valley floor, exceeding fill heights of 90 feet.
3. A minimum of 8 ridges and valleys would have to be crossed with maximum cut lengths of up to 4,250 feet and exceeding 260 feet in depth at maximum.

If the TRRC alignment were "rerouted" to the east/south of the NRHP boundary, the following impacts would result:

1. The overall rail alignment would be increased in length by over one mile -- 6,400 feet.
2. A minimum of 6 ridges and valleys would have to be crossed with maximum cut lengths of up to 12,500 feet and exceeding 620 feet in depth at maximum.

It should be noted that the refined route described by TRRC in 1998 contemplates a maximum cut length of 1,100 feet with a maximum 75 foot depth, substantially less than either bypass route described above.

In addition to the greater cut and fill, any routing to the north/west or to the east/south would also result in the following impacts:

- a more circuitous alignment;
- grade and curvature demands that are inconsistent with the criteria set forth above and with safe rail operations absent the described cut/fill;
- significantly more disruption to the landscape and thus to the environment generally;
- significantly greater construction expense;
- higher operating (largely, fuel and labor) and maintenance costs;
- increased amount of total private and federal land disturbance by a minimum of 400 acres, based on an assessment of the amount of land that would be disturbed in connection with the cuts and fills described above;
- increased encroachment on the Tongue River flood-plain by a minimum of 40 acres, 14 acres of this being irrigated farm land, based on an assessment of the amount of land that would be disturbed in connection with the cuts and fills described above;
- increased likelihood of derailments due to increased curves and grades; and
- greater air quality impacts associated with train operations due to increased fuel consumption resulting from greater length of the line.

The NEPA requirement that alternatives be considered is subject to a “rule of reason” such that unreasonable or infeasible alternatives need not be addressed. *See National Resources Defense Council, Inc. v. Hodel*, 865 F.2d 288, 294-95 (D.C. Cir. 1988). According to the Supreme Court, “[T]he concept of alternatives [under NEPA] must be bounded by some notion of feasibility.” *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 551 (1978). Thus, alternatives that are neither practical nor effective, which is the case with either of the bypasses around the Wolf Mountains Battlefield, need not be evaluated in depth. *See Airport Neighbors Alliance, Inc. v. U.S.*, 90 F.3d 426 (10th Cir. 1996). Indeed, any alternative that would thwart a primary purpose of the TRRC line, which is the efficient transportation of coal, need not be evaluated.

In short, the size and extent of the NRHP boundary designation for the Wolf Mountains Battlefield (approximately 2,756 acres) and the surrounding difficult terrain would pose very difficult problems relative to any effort to re-route the TRR line around that boundary. For that reason, and the other reasons identified above, TRRC cannot feasibly develop such a bypass routing. However, any adverse impacts of the rail route on the battlefield area can be mitigated, as previously determined by SEA and discussed next.

The Impacts on the Battlefield of the Current Planned Routing Can be Mitigated

While TRRC’s alignment through the NRHP area (as refined in 1998) traverses the NRHP boundaries and thus will impact the area to some degree, that alignment avoids all of the most historically sensitive features of the Wolf Mountains Battlefield site, including Battle Butte itself, an area of heavy fighting during the battle. The line, as per the refinements made in 1998, would be located about 2,000 feet south of the correct site Battle Butte, and further away from the site than the approved alignment, as shown on Figure 1. This is considerably farther from that site than the existing county road. Further, the line would avoid important site features situated to the south and southeast of Battle Butte, including reported warrior positions, warrior movement routes and the location where the Cheyenne medicine man Big Crow fell during the battle.

The impacts of the approved route on cultural resources have been noted in the TRRC II DEIS, which concluded that “impacts to any sites determined eligible for the National Register could be mitigated through appropriate data recovery procedures.” TRRC II DEIS at 5-6. The Supplemental DEIS issued in TRRC III notes that, with respect to the resources at the Wolf Mountains (Battle Butte) Battlefield, “a treatment plan would be developed that would outline procedures to avoid or mitigate the impacts of the railroad to this site.” Supplemental DEIS at 5-19. The Programmatic Agreement discussed below provides for the measures necessary to identify and mitigate any features of the site which may be impacted by the rail alignment.

TRRC believes that its consideration of routes has demonstrated a good faith effort in regard to addressing cultural resource. In conformity with the requirements of the Section 6 of the National Historic Preservation Act process, TRRC is prepared to work under the terms specified in the Programmatic Agreement to identify, assess impacts, and mitigate any adverse impacts to cultural

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resources that may be encountered during the course of a more intensive review of resources that may be located along the final alignment in the Wolf Mountains Battlefield area.

The Programmatic Agreement

The TRRC III Draft Supplemental EIS requires development and approval of a Programmatic Agreement (PA) to ensure proper identification and treatment of cultural and paleontology resources identified during the construction and operation of the TRR line. The Bureau of Land Management, which has raised concerns about impacts to the Wolf Mountains Battlefield site, is a signatory party to this PA and has had an opportunity to comment on its terms.

The PA sets forth the detailed requirements on how the impacts associated with the construction and operation of the TRR line would be addressed, including impacts to paleontology, architectural, historic, and cultural properties. The PA guides and regulates the procedures by which the identification and treatment of paleontology and cultural resources would occur. The PA includes detailed requirements for additional surveys of the entire rail line from Miles City to Decker; identification and evaluation of paleontology, prehistoric, historic, or traditional cultural sites or structures; development of a detailed Treatment Plan in consultation with the parties to the PA and the Native American community; and procedures for reviewing and addressing objections and/or disagreements. The PA is thus uniquely well-suited to provide a framework for mitigating any adverse impacts to cultural resources at the Wolf Mountains Battlefield site.

Please let us know if you have any questions regarding the above.

Respectfully,

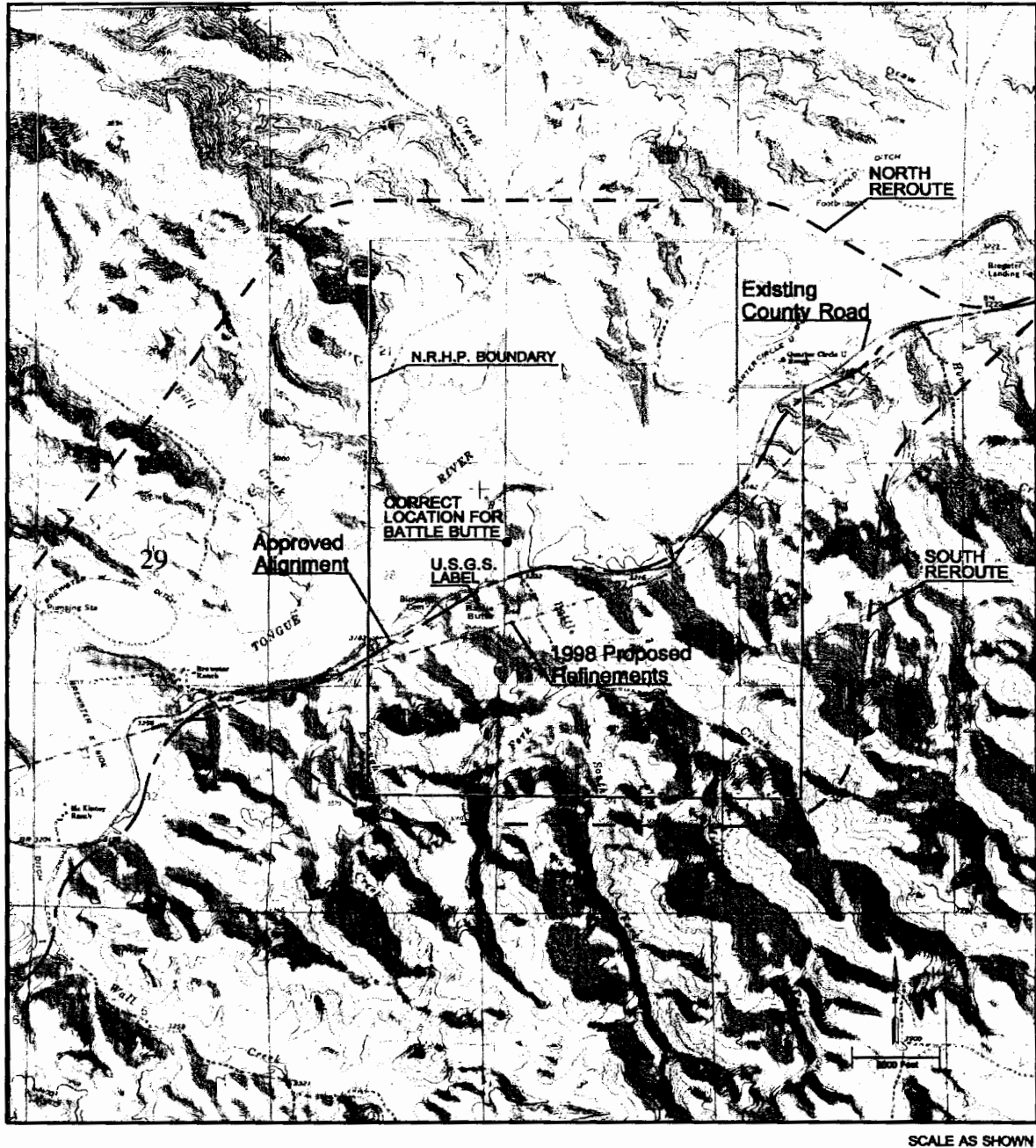


Betty Jo Christian

David H. Coburn

Attorney for Tongue River Railroad
Company, Inc.

cc: Ken Blodgett, SEA
Scott Steinwert, Circlepoint



Wolf Mtns. Battlefield Location Map

**T6S-R42E P. M. M.
Rosebud County, MT**

Figure 1